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In The
Supreme Court of the United States

BRISTOL-MYERS SQUIBB COMPANY,

Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO, *et al.*,

Respondents.

On Writ Of Certiorari To The California Supreme Court

BRIEF OF DRI–THE VOICE OF THE DEFENSE BAR AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

DRI-The Voice of the Defense Bar (www.dri.org) is an international membership organization composed of more than 22,000 attorneys who defend the interests of businesses and individuals in civil litigation. DRI's mission includes enhancing the skills, effectiveness, and professionalism of defense lawyers; promoting appreciation of the role of defense lawyers in the civil justice system; anticipating and addressing substantive and procedural issues germane to defense lawyers and fairness in the civil justice system; and preserving the civil jury. To help foster these objectives, DRI participates as *amicus curiae* at both the certiorari and merits stages in carefully selected Supreme Court cases which present questions that are exceptionally important to civil defense attorneys, their corporate or individual clients, and the conduct of civil litigation.

The issue in this case—the ability of out-of-state plaintiffs to pursue mass tort litigation against a corporate defendant that is not "at home" in the forum state—is a subject of fundamental importance to DRI and the civil defense bar. A state court's assertion of personal jurisdiction over nonresident corporate defendants implicates the fairness of the civil justice system, in other words, due process

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[1] In accordance with Supreme Court Rule 37.6, *amicus curiae* DRI-The Voice of the Defense Bar certifies that no counsel for a party authored this brief in whole or part, and that no party or counsel other than the *amicus curiae*, its members, and its counsel, made a monetary contribution intended to fund preparation or submission of this brief. Counsel of record have lodged blanket consents to the filing of *amicus* briefs.

concerns which this Court repeatedly has emphasized involve "traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted); *see, e.g.*, *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting *Int'l Shoe*); *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (same); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918-19 (2011) (same); *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 863, 880 (2011) (same); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413 (1984) (same); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (same).

"Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs . . . ." *Walden*, 134 S. Ct. at 1122. The California Supreme Court's 4-3 majority opinion in this case, however, tramples on petitioner Bristol-Myers Squibb's due process rights. Despite the absence of a causal connection between that out-of-state company's California activities and the out-of-state plaintiffs' product liability claims, the majority opinion allows those plaintiffs to "forum shop" their claims and sue Bristol-Myers Squibb ("BMS") in California state court based on a subjective "sliding scale approach to specific jurisdiction." Pet. App. 32a. That fuzzy test for demonstrating the "relatedness" needed to establish case-specific jurisdiction over a nonresident defendant, *see Helicopteros*, 466 U.S. at 414, obliterates this Court's "distinction between general or all-purpose jurisdiction, and specific or conduct-linked jurisdiction," *Daimler*, 134 S. Ct. at

751. Even where, as here, nonresident plaintiffs' claims have no connection to California and would be exactly the same if the out-of-state defendant had no contacts with California at all, the state supreme court's tilted sliding-scale extends the reach of personal jurisdiction to a product liability defendant merely because its promotional and distribution activities are nationwide. *See* Pet. App. 29a-30a. In reality, the California Supreme Court's sliding scale is a sliding door that opens automatically for nonresident mass tort plaintiffs and forum-shopping attorneys who choose to subject nonresident corporations to the enormous risks and burdens of litigation in one of the nation's most plaintiff-friendly state court systems.

Amicus curiae DRI-The Voice of the Defense Bar urges this Court to reverse the California Supreme Court and issue an opinion that requires state courts to align their exercise of personal jurisdiction over out-of-state defendants with this Court's precedents and the mandates of due process.

SUMMARY OF ARGUMENT

The California Supreme Court acknowledged that "the ultimate question under the due process clause [is] whether the exercise of jurisdiction is fair." Pet. App. 22a. But over a strong dissent, the majority opinion departs from "traditional notions of fair play and substantial justice." *Int'l Shoe*, 326 U.S. at 316. It subjects out-of-state corporate defendants to the "specific jurisdiction" of California state trial courts in order to adjudicate out-of-state plaintiffs' mass tort claims that have no substantial connection to a defendant's California-specific activities. Under the

majority's "sliding scale approach," Pet. App. at 32a, a mass tort defendant's "nationwide marketing and distribution" of a widely used product (here, a brand-name prescription drug), *id.* at 29a, is enough of a nexus for hundreds of nonresident plaintiffs to hale a nonresident manufacturer into the throes of litigating in the California state court system. The state supreme court's expansive view of specific jurisdiction conflicts with this Court's personal jurisdiction jurisprudence, which is founded upon due process concerns and includes recent cases such as *Walden*, *Daimler*, and *Goodyear*.

This Court should not allow California (or any other state) to employ a lax approach toward specific jurisdiction as a way of attracting out-of-state mass tort plaintiffs and their forum-shopping counsel. California *in particular* should not be permitted to use a slanted sliding scale as a way of elevating its state court system into a national forum for trial of nonresident plaintiffs' mass tort claims against corporate defendants that are not "at home" in the State. As this brief explains, California's state court system, both in terms of substantive law and trial-court procedures, is already notorious for stacking the deck against manufacturers of allegedly defective products.

ARGUMENT

I. THE CALIFORNIA SUPREME COURT'S EXPANSIVE VIEW OF SPECIFIC JURISDICTION IS AN OPEN INVITATION TO FORUM SHOPPERS

A. The majority opinion encourages nonresident mass tort plaintiffs to sue nonresident corporate defendants in California state courts

At least since *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), this Court, in many different contexts, has decried various forms of "forum shopping." *See, e.g.*, *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1672 (2015) (rejecting a state judge recusal rule "that would enable transparent forum shopping"); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962, 1969 (2014) ("The federal limitations period governing copyright suits serves . . . to prevent the forum shopping invited by disparate state limitations periods . . . ."); *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 134 S. Ct. 568, 583 (2013) (federal change-of-venue statute "should not create or multiply opportunities for forum shopping" where parties have agreed to a contractual forum-selection clause) (internal quotation marks omitted); *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 415 (2010) ("We must acknowledge the reality that keeping the federal court-door open to class actions that cannot proceed in state court will produce forum shopping."); *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984) ("The interpretation given to the Arbitration Act by the California Supreme Court would . . . encourage and reward forum shopping."); *Hanna v. Plumer*, 380 U.S. 460,

468 (1965) (The "outcome-determination" test for application of state law in federal diversity cases "cannot be read without reference to the twin aims of the *Erie* rule: discouragement of forum-shopping and avoidance of inequitable administration of the laws."); *see also* Note, *Forum Shopping Reconsidered*, 103 Harv. L. Rev. 1677, 1681 (1990) ("The Supreme Court has relied on the 'danger of forum shopping' in reaching many decisions.").

The California Supreme Court's flexible sliding-scale standard for jurisdictional relatedness, however, *encourages* forum shopping by opening the State's courthouse doors to multitudes of out-of-state product liability plaintiffs and entrepreneurial contingency-fee counsel who seek enormous damages awards or lucrative settlements from corporate defendants that are "not 'at home' in California." *Daimler*, 134 S. Ct. at 751 (quoting *Goodyear*, 564 U.S. at 919). "The practical effect of the decision in the mass tort context . . . is that it sets a precedent for finding specific jurisdiction over any foreign corporation that sold, marketed, or distributed products nationally, even if the injuries giving rise to the claim occurred wholly outside the forum state." Jesse G. Ainlay & Elizabeth S. Dillon, *Examining the Ways That Plaintiffs Seek to Narrow Daimler v. Bauman*, For The Defense, Nov. 2016, at 55.

As Justice Werdegar's dissenting opinion explains, "[u]nder the majority's theory of specific jurisdiction, California provides a forum for plaintiffs from any number of states to join with California plaintiffs seeking redress for injuries from virtually any course of business conduct a defendant has pursued on a

nationwide basis, without any showing of a relationship between the defendant's conduct in California and the nonresident plaintiffs' claims." Pet. App. 84a-85a (Werdegar, J., dissenting). By asserting that a "claim need not arise directly from the defendant's forum contacts . . . to warrant the exercise of specific jurisdiction," *id.* at 22a (internal quotation marks omitted), the majority opinion flouts this Court's personal jurisdiction jurisprudence, going back to *International Shoe*. *See, e.g. Goodyear*, 564 U.S. at 919 ("Specific jurisdiction . . . depends on an *affiliatio[n] between the forum and the underlying controversy*, principally, activity or an occurrence that takes place *in the forum State* and is therefore subject to the State's regulation.") (internal quotation marks omitted) (emphasis added); Pet. App. 52a-53a (Werdegar, J., dissenting) (discussing the due process principles established by *Int'l Shoe*).

The majority opinion not only enables, but also invites, untold numbers of plaintiffs from around the United States—nonresidents who have suffered no injuries in or traceable to California—to band together in California state courts and pursue mass tort litigation against out-of-state defendants such as petitioner BMS here. *See, e.g.*, Pet. App. at 37a-39a, 41a-43a (discussing the supposed virtues of litigating in California). California's notion that its state courts should function as some sort of national forum for mass tort suits between out-of-state parties conflicts with what this Court has described as interstate federalism. *See World-Wide Volkswagen*, 444 U.S. at 293 ("[W]e have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain

faithful to the principles of interstate federalism embodied in the Constitution. . . . The sovereignty of each State . . . implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment."); *see also* Pet. App. 82a (Werdegar, J. dissenting).

Authorizing vast numbers of nonresident plaintiffs (and their forum-shopping attorneys) to hale nonresident corporate defendants into California state courts by means of the extraordinarily over-inclusive specific jurisdiction theory at issue in this case also exacerbates the pro-plaintiff bias that already infects the State's judicial system. "Though California courts are already plagued with budget issues that have resulted in clogged dockets, courthouse construction projects being put on hold, and unfunded but needed judgeships . . . the state's judiciary continues incomprehensibly to roll out the red carpet for still more out-of-state plaintiffs – even those suing out-of-state defendants for alleged injuries that occurred outside California." American Tort Reform Foundation, "Judicial Hellholes," http://www.judicialhellholes.org/2016-2017/california.

"Loose jurisdictional rules that allow plaintiffs to choose among many potential courts give judges an incentive to be pro-plaintiff in order to attract litigation." Daniel Klerman, *Rethinking Personal Jurisdiction*, 6 J. of Legal Analysis 245, 247 (2014). More specifically, "the fact that plaintiffs choose the most favorable forum may give some courts an incentive to make their laws, procedures, and institutions especially favorable to plaintiffs." *Id.* at

259. In other words, one "problem with forum shopping is that it can lead to 'forum selling,' the creation of excessively pro-plaintiff law by judges who want to hear more cases." *Id.* at 247. "Without constitutional constraints on assertions of jurisdiction, some courts are likely to be biased in favor of plaintiffs in order to attract litigation and thus benefit themselves or their communities." Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. Cal. L. Rev. 241, 243 (2016). Or some courts may seek to act as a national forum for mass tort suits in order to hold corporate defendants accountable for their nationwide promotion and distribution of allegedly defective products regardless of where the plaintiffs reside, and despite the total absence of case-specific forum contacts on the part of either the nonresident plaintiffs or the out-of-state defendant. "While only a few judges may be motivated to attract more cases, their actions can have large effects because their courts will attract a disproportionate share of cases." *Ibid.* "The danger of forum selling suggests" that due process "restrictions on state assertions of personal jurisdiction" provide "an important safeguard against biased judging." *Ibid.*

Deliberately or not, the California Supreme Court's majority opinion, in its effort to defend application of the sliding-scale approach, engages in a type of forum selling on behalf of that State's court system. The majority asserts, for example, that —

- Despite the out-of-state plaintiffs' diverse residences, "our State's Civil Discovery Act provides for taking depositions outside of California for use at trial, Pet. App. 38a;

- "BMS has provided no evidence to suggest that the cost of litigating plaintiffs' claims in San Francisco is excessive or unduly burdensome for BMS compared to any other relevant forum or forums," *ibid.*;

- California's interest "in providing a forum for both resident and nonresident plaintiffs . . . is further underscored by the substantial body of California law aimed at protecting consumers from the potential dangers posed by prescription medication, including warnings about serious side effects and prohibiting false and misleading labeling," *id.* at 39a; and

- "the current forum, the San Francisco Superior Court, is equipped with a complex litigation department that is well suited to expeditiously handle such large cases, *id.* at 41a.

Judicial efforts to justify sweeping assertions of personal jurisdiction over nonresident defendants by "selling" California state courts as a desirable forum for adjudicating nonresident plaintiffs' mass tort claims is troubling, including because, as discussed in the next section of this brief, the California state judicial system is decidedly pro-plaintiff. "Since impartial judging is a key Due Process concern, forum selling helps explain why restrictions on state assertions of personal jurisdiction are properly addressed by the Due Process Clause." Klerman & Reilly, *supra* at 243. Although the inequitable effects of forum shopping and forum selling "can be cured by constricting jurisdictional choice," *id.* at 247, the California Supreme Court's elastic view of specific personal jurisdiction points exactly in the opposite direction.

B. California state courts do not provide a fair forum for adjudication of nationwide mass tort suits

The California Supreme Court's sliding-scale standard for specific jurisdiction tilts the scales of justice in favor of plaintiffs. Adopted more than twenty years ago by a unanimous court in *Vons Companies, Inc. v. Seabest Foods, Inc.*, 926 P.2d 1085 (Cal. 1996), *see* Pet. App. 32a, but now endorsed by only four of seven justices,[2] the sliding-scale approach—and the court's opinion in this case—have helped to keep California's state court system at the top of the American Tort Reform Foundation's annual list of the nation's worst "Judicial Hellholes." *See* http://www.judicialhellholes.org/about/ ("Judicial Hellholes have been considered places where judges systematically apply laws and court procedures in an unfair and unbalanced manner, generally against defendants in civil lawsuits.").

For example, according to the Judicial Hellholes website, more than 2,900 pharmaceutical-related product liability suits were filed in Los Angeles and San Francisco state courts between January 2010 and May 2016. Of the more than 25,000 plaintiffs in those suits, 90% resided outside of California; in fact, two-thirds of the suits did not include *any* California residents. *See* http://www.judicialhellholes.org/2016-2017/california (citing and linking to Civil Justice League of California statistics).

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[2] Both Justice Werdegar, who authored the dissenting opinion in the present case, and Justice Chin, who joined the dissent, had concurred in *Vons*.

Along the same lines, year after year the U.S. Chamber of Commerce's Institute for Legal Reform ranks California's state liability system one of the very worst in the nation, surpassed only by Illinois, Louisiana, and West Virginia. *See Ranking the States, A Survey of the Fairness and Reasonableness of State Liability Systems*, U.S. Chamber Institute for Legal Reform (2015), *available at* http://www.instituteforlegalreform.com/uploads/sites/1/ILR15077-HarrisReport_BF2.pdf. Participants in the Institute's "Lawsuit Climate Survey" were a national sample of knowledgeable senior executives, in-house general counsel, and senior litigators. *Id.* at 3. The Survey takes into account factors such as treatment of class action and mass consolidation suits, timeliness of summary judgment or dismissal, discovery, admissibility of scientific and technical evidence, damages, and judges' impartiality, competence, and fairness. *Id.* at 5. From the viewpoint of providing a fair judicial forum, California ranks dead last in adjudication of mass tort litigation. *Id.* at 14; *see also* Editorial, *California's litigious climate*, L.A. Daily News, Dec. 27, 2016 ("California's litigation climate remains one of the worst in the country.").

In addition to laying out a borderless jurisdictional welcome mat for out-of-state plaintiffs seeking to sue out-of-state companies, there are many other reasons why California's state courts are a plaintiff-friendly magnet that attracts forum shoppers in mass tort cases. For example—

- *Choice of Law.* California utilizes a subjective "governmental interest" approach under which

California law applies unless a California court determines that (i) there is a "'true conflict'" between "the governmental interests or purposes served by the applicable statute or rule of law of each of the affected jurisdictions," and (ii) another "jurisdiction's interests would be more severely impaired [than California's] if that jurisdiction's law were not applied." *Kearney v. Salomon Smith Barney, Inc.*, 137 P.3d 914, 917 (Cal. 2006); *see, e.g., Hurtado v. Superior Court*, 522 P.2d 666 (Cal. 1974) (California measure of damages applied in wrongful death action because other potentially concerned jurisdiction (Mexico) had no interest in having its own law applied).

- *Expert Opinion Testimony.* California trial courts are supposed to fulfill an expert testimony gatekeeper role. *See* Cal. Evid. Code §§ 801, 802. Nonetheless, the California Supreme Court continues to require state trial courts to apply the "general acceptance" test for admissibility of expert testimony concerning new scientific techniques despite this Court's rejection of that test for purposes of the Federal Rules of Evidence in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *See, e.g., People v. Lucas*, 333 P.3d 587, 662 n.36 (Cal. 2014); *Sargon Enterprises, Inc. v. Univ. of Southern Calif.*, 288 P.3d 1237, 1252 n.6 (Cal. 2012).

- *"Consumer Expectations" Liability.* California treats the "ordinary consumer expectations" test as an independent theory of liability, and rejects a more demanding "unreasonably dangerous" test, in design defect cases. *See Soule v. General Motors, Corp.*, 882 P.2d 298, 304 (Cal. 1994).

- *"Product Line" Liability.* Unlike most states, California imposes strict tort liability for defects in a predecessor manufacturer's product where the defendant has acquired the predecessor's business and continues the same product line. *See Ray v. Alad Corp.*, 560 P.2d 3 (Cal. 1977); *compare Semenetz v. Sherling & Walden, Inc.*, 851 N.E.2d 1170, 1175 (N.Y. 2006) (rejecting *Ray v. Alad* and joining "the majority of courts declining to adopt the 'product line' exception" to the general rule against successor liability).

- *Dissolved and Successor Corporation Liability.* Unlike the majority of states, California does not impose a statutory deadline for suing dissolved corporations. *Compare* Cal. Corp. Code § 2010 *with* Del. Code Ann. tit. 8, § 278 (allowing lawsuits until three years from date of dissolution). Further, a successor corporation can be liable for payment of punitive damages assessed against its predecessor. *See* Cal. Corp. Code § 1107.

- *Statute of Limitations.* The general 2-year statute of limitations for personal injury claims, Cal. Code Civ. Proc. § 335.1, is tolled by a 1-year discovery rule, *see* Cal. Courts, Statutes of Limitations, http://www.courts.ca.gov/9618.htm.

- *Trial-Court Procedures.* California's procedural rules work together to favor tort plaintiffs who want to press for an unreasonably accelerated trial and/or force a pretrial settlement. For example, California state trial courts can grant a motion for preference, thereby requiring a trial to commence within 120 days. *See* Cal. Code Civ. Proc. § 36(f). Such a motion can be granted not only at the request

of one or more plaintiffs who are under 14 or over 70 years of age, or terminally ill, *id.* §§ 36(a), (b) & (d), but also upon "a showing that satisfies the court that the interests of justice will be served" by an expedited trial. *Id.* § 36(e). If the defendant hopes to avoid trial by moving for summary judgment, it must wait at least 60 days from appearance of the opposing parties, and then provide at least 75 days advance notice of a summary judgment hearing that must be held at least 30 days before the case is set for trial. *See id.* § 437c(a). And despite these severe time constraints, a summary judgment motion "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken." *Id.* § 437c(b)(1). As a practical matter, these procedural rules often make it impossible for a defendant to pursue pretrial summary judgment.

The California Supreme Court's sliding-scale specific jurisdiction standard only exacerbates these and other pro-plaintiff features of the California judicial system.

II. THE CALIFORNIA SUPREME COURT'S "SLIDING-SCALE" APPROACH TO SPECIFIC JURISDICTION OFFENDS DUE PROCESS

"The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear*, 564 U.S. at 923. More specifically, "[t]he Due Process Clause . . . constrains a State's authority to bind a nonresident defendant to a judgment of its courts." *Walden*, 134 S. Ct. at 1121. To ensure that the "exercise [of] personal jurisdiction over an out-of-

state defendant . . . does not offend 'traditional notions of fair play and substantial justice,'" *Goodyear*, 564 U.S. at 923 (quoting *Int'l Shoe*, 326 U.S. at 316), a state court "looks to the defendant's contacts with the forum State itself." *Walden*, 134 S. Ct. at 1122.

"A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear*, 564 U.S. at 919 (quoting *Int'l Shoe*, 326 U.S. at 317). "In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Ibid.* (internal quotation marks omitted); *see also Walden*, 134 S. Ct. at 1121 ("The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation. . . . For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State.") (internal quotation marks omitted).

The California Supreme Court's majority opinion stretches specific jurisdiction so far, it "'has elided the essential difference between case-specific and all-purpose (general) jurisdiction.'" *Daimler*, 134 S. Ct. at 757 (quoting *Goodyear*, 564 U.S. at 927); *see* Pet. App. 50a (Werdegar, J., dissenting) ("[T]he majority expands specific jurisdiction to the point that, for a

large category of defendants, it becomes indistinguishable from general jurisdiction."). This Court explained in *Daimler* that "general jurisdiction has come to occupy a less dominant place in the contemporary scheme," unlike specific jurisdiction, which "has become the centerpiece of modern jurisdiction theory." *Daimler*, 134 S. Ct. at 755, 758 (internal quotation marks omitted). The majority opinion's sliding-scale approach to specific jurisdiction, however, "appears to reintroduce general jurisdiction by another name." Linda J. Silberman, *The End of Another Era: Reflections On Daimler and Its Implications For Judicial Jurisdiction In the United States*, 19 Lewis & Clark L. Rev. 675, 687 (2015) (discussing the California Court of Appeal opinion affirmed by the California Supreme Court in this case); *see also* Pet. App. 50a-51a (Werdegar, J., dissenting) ("What the federal high court wrought in *Daimler*—a shift in the general jurisdiction standard from the 'continuous and systematic' test of *Helicopteros* to a much tighter 'at home' limit—this court undoes under the rubric of specific jurisdiction.").

In so doing, the majority opinion violates the due process principles upon which this Court's personal jurisdiction jurisprudence is founded. The majority's assertion that its "decision does not render California an all-purpose forum" for out-of-state tort plaintiffs, Pet. App. 35a, rings hollow. According to the majority's wide-ranging view of specific jurisdiction, California state courts can exercise personal jurisdiction over virtually any company that engages in a "nationwide marketing, promotion, and distribution" of a drug or other product, *id.* at 28a,

despite the absence of any causal connection between the nonresident plaintiffs' claims and the company's California-specific activities. The majority contends that "a single, coordinated, nationwide course of conduct" directed from other states, *id.* at 29a-30a, is adequate to establish a "substantial nexus or connection" with California to satisfy "the relatedness requirement for specific jurisdiction." *Id.* at 21a (internal quotation marks omitted). Importantly, the majority also insists that a defendant's California-specific contacts *need not* "bear some substantive legal relevance to the nonresident plaintiffs' claims." *Id.* at 30a.

This overreaching approach turns specific jurisdiction on its head. "Adjudicatory authority is 'specific' when the suit 'aris[es] out of or relate[s] to the defendant's contacts *with the forum*.'" *Goodyear*, 564 U.S. at 923-24 (quoting *Helicopteros*, 466 U.S. at 414 n.8) (emphasis added). But under the majority's subjective sliding-scale standard, "the intensity of forum contacts and the connection of the claims to those contacts is *inversely* related": "[T]he more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim." Pet. App. 22a (internal quotation marks omitted) (emphasis added). In other words, the majority viewed a defendant's *non*-case-specific contacts with a forum state—for example, nationally uniform product promotion and distribution—as a substitute for an actual, substantial connection between nonresident plaintiffs' claims and a nonresident defendant's forum-specific activities. This inverted logic defies

the due process precepts that underlie this Court's specific jurisdiction case law.

The unfairness of the state supreme court's inverse sliding scale demonstrates why it undermines this Court's personal jurisdiction jurisprudence, which is *predicated* on "compatibility with the Fourteenth Amendment." *Goodyear*, 564 U.S. at 918. For example, unless this Court unequivocally rejects California's sliding-scale approach on the ground that it exceeds the bounds of due process, it will fit within every state long-arm statute which, like California's, broadly enables state courts to "exercise jurisdiction on any basis not inconsistent with the Constitution." Cal. Code Civ. Proc. § 410.10. *Every* such state then would be able not only to entertain, but also vie for, nonresident plaintiffs' mass tort suits against nonresident defendants merely because a company markets and distributes an allegedly defective product nationally. Such "[j]urisdictional competition" among state judicial systems "is very likely to be bad," including because, as discussed above, "[p]ersonal jurisdiction rules that give plaintiffs' substantial choice of forum encourage pro-plaintiff bias." Klerman & Reilly, *supra* at 244; Klerman, *supra* at 248. California's state courts already suffer from plenty of that.

CONCLUSION

The judgment of the California Supreme Court should be reversed.

Respectfully submitted,

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